**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**
**SPECIAL CIVIL APPLICATION No. 15463 of 2007**
**With**
**SPECIAL CIVIL APPLICATION No. 16252 of 2007**
**To**
**SPECIAL CIVIL APPLICATION No. 16423 of 2007**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE H.K.RATHOD**

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

**MORBI NAGAR PALIKA (NAGAR SEVASADAN) - Petitioner(s)**
**Versus**
**THE STATE OF GUJARAT & 172 - Respondent(s)**

==========

**Appearance :**

MR KIRTIDEV R DAVE for Petitioner(s) : 1,MR RAHUL K DAVE for Petitioner(s) : 1,
Mr. Sunit Shah, GP with Ms. Sandhya Natani, AGP, Mr. Vinay Pandya, Mr. Amit Patel and Mr. Hukum Singh, AGPs for Respondent(s) : 1,
None for Respondent(s) : 2 - 173.

==========

**CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD**

**Date : 02/07/2007**

**ORAL JUDGMENT**

1. Heard learned Advocate Mr. KR Dave for petitioner and Mr. Sunit Shah, learned

Government Pleader with Ms. Sandhya Natani, Mr. Vinay Pandya, Mr. Amit Patel, and Mr. Hukum Singh, Asstt. Gps for Respondent State Authority in this group of petitions.

2. In this group of petitions, petitioner, Morbi Nagarpalika has challenged the order passed by labour court, Rajkot in recovery applications filed under section 33-C-2 of the Industrial Disputes Act, 1947 (“ID Act, 1947” for short)dated 23rd February, 2007 wherein the labour court has determined amount of Rs.6000.00 (Rupees six thousand only) payable to each workman by the opponent – Nagarpalika under section 33-C-2 of the ID Act, 1947 by ordering the Nagarpalika to pay the said amount to each workman within thirty days from the date of receipt of said order. No order was made as to costs by the labour court.

3. Learned Advocate Mr. KR Dave appearing for petitioners in this group of petitions raised certain questions while challenging the orders in question. He submits that the recovery applications were filed by the respondent after a period of 10 years which is beyond the reasonable time and, therefore, labour court has

committed error in entertaining such application beyond the reasonable period. He submits that the respondents are having right to claim benefit but they should have to claim such right as early as possible within some reasonable period. He submits that labour court ought to have rejected the applications as time barred. He submits that labour court ought to have appreciated that the workmen are not entitled for benefit of the dress in cash. He submits that respondent workman has decided the figure of Rs.600.00 but on what basis, workmen reached to such figure, that has not been clarified by workman and labour court has also not appreciated that aspect. He submits that respondents were aware about their right to claim such benefit of dress allowance or dress but they remained silent and filed claim under section 33-C-2 of the ID Act, 1947 after a period of ten years and, therefore, labour court should have rejected all these applications on the ground that they are not filed within the reasonable period. In support of his submissions, reliance was placed by him on the following decisions :

(1) Civil Appeal NO. 723 of 1966 in case of State of Gujarat versus Patil Raghav Natha and others decided on 21.4.1969.

(2) Civil Appeal N. 1239-1244 and 1245 of 2001 in case of SM Nilajkar & Ors. Versus Telecom, District Manager, Karnataka decided on 31.3.2003;

(3) Civil Appeal NO. 1084 of 2006 in case of Pune Municipal Corporation versus State of Maharashtra & Ors decided on 26.2.2007;

(4) Special Civil Application NO. 6415 of 2006 in case of Botad Nagar Palika versus General Secretary decided on 28.7.2006.

4. I have considered the submissions made by the learned Advocate Mr. Dave for the petitioners in these petitions. Relevant provisions of section 33-C-2 of the ID Act, 1947 are reproduced as under:

> “33C. Recovery of money due from an employer. - (1) xxx
> (2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which

such benefit should be computed, then, the question may, subject to any rules that may be made under this A ct, be decided by such labour court as may be specified in this behalf by the appropriate Government within a period not exceeding three months.

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit. “

5. In respect of the contention raised by the learned Advocate Mr. KR Dave for the petitioners about limitation or delay in filing of the recovery applications, plain reading of section 33C (2) of the ID Act, 1947 makes it clear that it is not prescribing any period of limitation as to within how much period, such application has to be filed by the workman. This law has been examined by the apex court in two decisions, one in case of Bombay Gas reported in AIR 1964 SC 752 and other in case of Central Bank of India reported in AIR 1964 SC 743 Both the decisions have been considered by this Court

in case of GSRTC versus KM Shah reported in 1998 II GLH 996 wherein this Court (Coram : Hon'ble Mr. Justice HL Gokhale,J.) has examined similar contentions raised by the learned Advocate Mr. Dave before this Court and same was rejected by this Court in the said decision. Therefore, considering the language of section 33C (2) of the ID Act, 1947 and also in view of the decisions referred to above, contention about limitation raised by Mr. Dave before this court cannot be accepted and same is required to be rejected as section 33C (2) Of the ID Act, 1947 is not providing for any period of limitation for filing of such application. The submission about filing of such application within reasonable period or within time limit would apply only to cases wherein power has to be exercised and not when the right is to be exercised by any workman, such question of reasonable period or limitation would not come in the way of workman in view of the language of section 33C (2) of the ID Act, 1947. If the employee is having any legal right which is not questioned or disputed by the employer, that each year, two pairs of dresses are available to

concerned employee and that dresses have not been made available by the employer to employee concerned, then, naturally, employee concerned is entitled for the benefit of two dress each year as not supplied by the employer. Petitioner has not disputed such right of the workmen herein. It is also not the case of the petitioner that from year 1982-83/1992-93, in any year, two pairs of dresses have been supplied and, therefore, claim of the workmen is false or incorrect. Before the labour court, vide Exh. 9/1, a Service Rules of the Nagarpalika - Staff Dress Rules were produced by the petitioner vide Exh. 22. Thereafter, workman was examined before the labour court vide Exh. 10 and vide Exh. 19, another witness for the petitioner was examined and labour court has considered that if the rules are providing for two pairs of dresses each year and not given by the petitioner and such right is also not challenged or disputed by the petitioner, then, it would crystalize the right of the workmen to claim and receive such benefit from the petitioner employer and, therefore, respondent workmen have proved pre-existing right to claim

and receive amount of dress which were not supplied by petitioner from 1982-83/1992-93. Such question was also examined earlier against the petitioner by the labour court in recovery application no. 330 of 1983 to 452 of 1983 wherein same question was examined by labour court and granted benefit in cash in favour of workmen concerned and that order was not challenged by petitioner before the higher forum. Thereafter, labour court considered the evidence which was produced by the respective parties before it and after considering the same, the labour court came to the conclusion while considering to be reasonable amount of two dresses, Rs.600.00, while computing benefits in terms of money looking to the nature of dress which is required to be supplied by the petitioner to male employee and female employee. Amount was suggested by witness for workmen in his evidence Rs.600.00 against which no objection was raised and no evidence contrary thereto was produced by the petitioner. Petitioner had not come forward before the labour court with the contention that amount of Rs.600.00 suggested by witness for workmen is

incorrect. On the contrary, witness for the petitioner had deposed in his cross examination that from 1982 to 1993, dress cloth was given to workmen but said witness was not prepared to produce record regarding receipt of dress to workmen before the labour court. It was admitted by said witness before the labour court that earlier, in view of non receipt of dress by the workmen, dispute was raised wherein orders were passed for depositing the amount in cash in lieu of the dress and in view of that, the contention raised by the petitioner before the labour court was rejected by the labour court and recovery applications were allowed by labour court by granting Rs.6000.00 for ten years period two pairs of dress per year dress in favour of each workmen and, therefore, according to my opinion, labour court has not committed any error in quantifying the amount of the benefit of dress at Rs.600.00 per year. In view of that evidence of the witness for the petitioner, contention of learned Advocate Mr. Dave that benefit cannot be converted or encashed in terms of money cannot be accepted by this court and same is therefore rejected by this court.

6. The view taken by this Court in Gujarat State Road Transport Corporation versus Keshavlal Maneklal Shah reported in 1998 (2) GLH 996 as per relevant para 3, 4 and 5 is reproduced as under:

> “3 Mr Munshaw, learned counsel for the petitioner, submitted that the claim of the workman was a belated one and ought to have been rejected on the ground of laches. He relied upon the judgement of single judge of this Court (Calla, J.) reported in 1996 (2) GLH 161 in the case of ESI SCHEME v. NATWARLAL AMRUTLAL SHAH. In that case, the application for over time had been filed under section 33(C)(2) of the Act belatedly and there was a delay of 17 years in filing that application and no explanation was given for filing it except that the workman was not much educated and had no knowledge of law. That application had been entertained by the learned judge of the Labour Court and that order came to be quashed in the aforesaid judgement of the learned single judge. The learned judge held, "The proceedings under section 33-C (2) of the Industrial Disputes Act initiated in the year 1990 in respect of over time for the period from 1973

to 1986 therefore should not have been entertained by the Labour Court merely because the Limitation Act is not applicable unlesss it could come to the conclusion that the delay has been reasonably explained." In the present case also the overtime for the period 1977-89 is sought to be claimed by filing an application in the year 1990. When one peruses the judgement of the learned single judge, there is a reference to the judgement of the Honourable Supreme Court in the case of Bombay Gas Company reported in AIR 1964 SC 752 and it is stated, "... support was sought to be taken from earlier decision of the Supreme Court in Bombay Gas Company's case [AIR 1964 SC pg.752] holding that the claim which was barred by time under the Payment of Wages Act can be made under section 33-C(2) of the I.D.Act. Thus this decision also does not lay down any such proposition of law that the case where no limitation is prescribed the party can approach or initiate proceedings under Section 33-C(2) of the I.D. Act at any time without explaining the delay." With due respect to my brother, he has not noted the observations made by the Hon'ble Supreme Court in para 13 of that judgement which reads as follows:-

"A claim under S. 33C(2) is a claim for wages within the meaning of the payment of Wages Act. It is, no doubt, somewhat anomalous that a claim, which would be rejected as barred by time if made under the Payment of Wages Act, should be entertained under S.33C (2) of the Act; but this apparent anomaly does not justify the introduction of considerations of limitation in proceedings under S.33C(2). It is necessary to bear in mind that though the legislature knew howthe problem of recovery of wages had been tackled by the Payment of Wages Act and how limitation had been prescribed in that behalf, it has omitted to make any provision for limitation in enacting S.33C (2). The failure of the legislature to make any provision for limitation cannot be deemed to be an accidental omission. In the circumstances, it would be legitimate to infer that legislature deliberately did not provide for any limitation under S.33C (2)."(underlining added)

It is also material to note that in that very volume, the judgement of the Constitution Bench in the case of CENTRAL BANK OF INDIA V. P.S.

RAJAGOPALAN AIR 1964 SC 743 is also reported and in that judgement on page 752 the Hon'ble Supreme Court has stated on facts of that case and on law as follows:-

"It is true that though the Sastry Award was passed in 1953 and the Labour Appellate Tribunal's decision was pronounced in 1954 and it became final on October 21, 1955, the respondents did not make their claims until 1962. We have had occasion in the past to emphasise the fact that industrial adjudication should not encourage unduly belated claims; but, on the other hand, no limitation is prescribed for an application under S.33C(2) and it would, on the whole, not be right for us to refuse an opportunity to the respondents to prove their case only on the ground that they moved the Labour Court after considerable delay."

(underlining added)

4 The nature of these proceedings also came to be considered by the Hon'ble Supreme Court later on in Central Inland Water Transport Corporation Ltd. v. Workmen

reported in AIR 1974 SC 1604 where the Hon'ble Supreme Court held that these proceedings are in the nature of execution proceedings and the observations made in para 12 of the said judgement are as follows:-

"A proceeding under Section 33C(2) is a proceeding, generally, in the nature of an execution proceeding wherein the Labour Court calculates the amount of money due to a workman from his employer, or if the workman is entitled to any benefit which is capable of being computed in terms of money, the Labour Court proceeds to compute the benefit in terms of money."

None of these judgements are considered by the learned single judge and the view taken by him is exactly contrary to the long standing judgement of the Hon'ble Supreme Court in the cases of Bombay Gas Company & Central Bank of India (supra). The Labour Court exercising the jurisdiction under section 33-C(2) has to examine the claim of the workman on merits even though the application is filed after a considerable delay and the consideration of limiation and requirement of explaining the delay cannot be introduced therein. Recently, in the case of Bombay

Telephone Canteen Employees Association v. Union of India reported in 1997(2) LLJ 647 a Bench of the two Judges of the Hon'ble Supreme Court held that the Telecom Department was not an industry and on a Reference being made to a Bench of 3 Judges in the case of General Manager, Telecom v. Srinivas Rao reported in 1998 1 LLJ 255, the Hon'ble Supreme Court noted that the long standing judgement in the case of Bangalore Water Supply and Sewerage Board reported in 1978 1 LLJ 349 had not been considered by that Bench. The Hon'ble Supreme Court therefore held in Srinivas Rao's case that the judgement in the case of Bombay Telephone Canteen Employees' case cannot be treated as laying down correct law. In that case, the Hon'ble Supreme Court has observed as follows:-

"It is needless to add that it is not permissible for us, or for that matter any Bench of lesser strength, to take a view contrary to that in Bangalore Water Supply case (supra) or to bypass that decision so long as it hold the field. Moreover, that decision was rendered long back nearly two decades earlier and we find no reason to think otherwise. Judicial

discipline requires us to follow the decision in Bangalore Water Supply case (supra)."

5 I am aware of the fact that I am sitting singly and the judgement of my brother in the case of ESI Scheme (supra) was rendered when he was sitting as a single judge. However, when the law laid down by the Hon'ble Supreme Court time and again is quite clear and those long standing judgements holding field are not considered in the ESI Scheme (supra) judgement, it will be within my jurisdiction to say so inasmuch as the law laid down by the Hon'ble Supreme Court binds the High Court under Article 141 of the Constitution of India. In the circumstances, it will have to be stated that the proposition laid down in the case of ESI Scheme (supra) cannot be treated as laying down the correct proposition of law. The order of the Labour Court cannot therefore be faulted for considering the belated claim of the respondent-workman."

7. The view taken by the Division Bench of this Court (Coram : Hon'ble Mr. Justice M.S. Shah and Hon'ble Mr. Justice D.H. Waghela,JJ.) in

Lallubhai Bapubhai Parmar v. Panchmahals District Panchayat and another reported in 2005 (3) GLR page 1907 in para 8 is reproduced as under:

"8. The only ground which has weighed with the learned Single Judge for allowing the petitions of the District Panchayat and setting aside the orders dated 29.9.2003 of the Labour Court is that there was no pre-existing right in favour of the workmen and, therefore, without any adjudication in a reference under Section 10(1) of the Industrial Disputes Act, the Labour Court could not have made any order for issuance of recovery certificates for benefits arising out of the Government Resolution dated 17.10.1988.

The question of maintainability of the recovery applications would have been of any consequence and relevance only if the district panchayat had contended that the Government Resolution dated 17.10.1988 was not applicable to the district panchayat or that the workmen were not employed by the district panchayat for any activity like construction and maintenance. Apart from the fact that the district panchayat had not raised any such dispute in any previous round of litigation, the case of the district panchayat itself is that the Government Resolution dated 17.10.1988 is applicable to the appellant-workmen, but they were entitled to the benefits under the said resolution only with effect from 1.4.2000. Even according to the district panchayat, the workmen were paid the benefits under the said Government Resolution dated 17.10.1988 with effect from 1.4.2000 and the controversy between the parties, therefore, merely was whether the workmen were entitled to the benefits of the said Government Resolution for the period from 1990-91 to 1993-94 or any other period between 1990-91 and 31.12.1999. The pre-existing right of the workmen flowing from the Government Resolution dated 17.10.1988 was, therefore, not disputed. Since the said Government Resolution stipulated that in order to get the minimum of the pay-scale the workman should have completed atleast five years' service with minimum 240 days' service in each year as contemplated by Section 25B of the Industrial Disputes Act, 1947, such provision did not detract from the fact that the workmen had pre-existing right to get the benefit of the Government Resolution dated 17.10.1988 upon fulfillment of the requirements stipulated in the said Government Resolution. When the specific jurisdiction is conferred on the Labour Court for passing an order under Section 33C(2) in favour of the workmen for recovery of dues and such jurisdiction is conferred in order to provide expeditious and inexpensive remedy to the workmen, the very object of such expeditious and inexpensive remedy under Section 33C(2) cannot be defeated by holding that the Labour Court could

not have considered the question of implementation of the Government Resolution dated 17.10.1988 in case of the appellant-workmen without their first getting adjudication under Section 10(1) of the Act. The workmen were employed by the district panchayat way back in the year 1973. When the workmen completed five years' service with minimum 240 days' service in each year between 1973 and 1990 or similar inquiry would be made on the basis of such material as may be produced by the authorities before the Labour Court. Such inquiry does not require any adjudication of the question whether the Government Resolution dated 17.10.1988 was applicable to the district panchayat or whether the workmen were covered by the said Government Resolution, when admittedly the district panchayat itself has given the benefits of the said Government Resolution to the appellant-workmen, albeit with effect from a subsequent date and not from the date from which such benefits were claimed by the workmen. As per the settled legal position, Section 33C(2) is more comprehensive than Section 33C(1). Section 33C(2) applies not only to cases of settlement or award or cases under Chapter VA of the Act, but to other cases as well. By a process of computation or calculation to be applied by it, the Labour Court has to determine the amount due. We are, therefore, clearly of the view that the recovery applications filed by the appellant-workmen were certainly maintainable under Section 33C(2) of the Industrial Disputes Act, 1947 and that the applications were certainly not premature.

Whether the workmen had filed second set of recovery applications even after receiving payments ?

8. In The Central Bank of India Ltd. v. P.S. Rajagpalan etc., reported in AIR 1964 Supreme Court 743, the apex court observed as under in para 15 and 16:

> “15. The legislative history to which we have just referred clearly indicates that having provided broadly for the investigation and settlement of industrial disputes on the basis of collective bargaining, the legislature recognised that individual workmen should be given a speedy remedy to enforce their existing individual rights, and so, inserted S. 33-A in the Act in 1950 and added S. 33-C in 1956. These two provisions illustrate the cases in which individual workmen can enforce their

rights without having to take recourse to S. 10(1) of the Act, or without having to depend upon their Union to espouse their cause. Therefore, in construing S. 33-C we have to bear in mind two relevant considerations. The construction should not be so broad as to bring within the scope of S. 33-C cases which would fall under S. 10(1). Where industrial dispute arise between employees action collectively and their employers, they must be adjudicated upon in the manner prescribed by the Act, as for instance by reference under S. 10(1). These disputes cannot be brought within the purview of S. 33C. Similarly, having regard to the fact that the policy of the Legislature in enacting S. 33C is to provide a speedy remedy to the individual workmen to enforce or execute their existing rights, it would not be reasonable to exclude from the scope of this section cases of existing rights which are sought to be implemented by individual workmen. In other words, though in determining the scope of S. 33C we must take care not to exclude cases which legitimately fall within its purview, we must also bear in mind that cases which fall under S. 10(1) of the Act for instance, cannot be brought within the scope of S. 34C.

16. Let us then revert to the words used in S. 33C(2) in order to decide what would be its true scope and effect on a fair and reasonable construction. When sub-sec. (2) refers to any workman entitled to receive from the employer any benefit there specified, does it mean that he must be a workman whose right to receive the said benefit is not disputed by the employer? According to the appellant, the scope of sub-s. (2) is similar to that of sub-s. (1) and it is pointed out that just as under sub-s. (1) any disputed question about the workmen's right to receive the money due under an award cannot be adjudicated upon by the appropriate Government, so under sub-s.

(2) if a dispute is raised about the workmen's right to receive the benefit in question, that cannot be determined by the Labour Court. The only point which the Labour Court can determine is one in relation to the computation of the benefit in terms of money. We are not impressed by this argument. In our opinion, on a fair and reasonable construction of sub-sec. (2) it is clear that if a workman's right to receive the benefit is disputed, that may have to be determined by the Labour Court. Before proceeding to compute the benefit in terms of money the Labour Court inevitably has to deal with the question as to whether the workman has a right to receive that benefit. If the said right is not disputed, nothing more needs to be done and the Labour Court can proceed to compute the value of the benefit in terms of money; but if the said right is disputed, the Labour Court must deal with that question and decide whether the workman has the right to receive the benefit as alleged by him and it is only if the Labour Court answers this point in favour of the workman that the next question of making the necessary computation can arise. It seems to us that the opening clause of sub sec. (2) does not admit of the construction for which the appellant contends unless we add some words in that clause. The Clause "Where any workman is entitled to receive from the employer any benefit'' does not mean "where such workman is admittedly, or admitted to be, entitled to receive such benefit''. The appellant's construction would necessarily introduce the addition of the words "admittedly, or admitted to be'' in that clause, and that clearly is not permissible. Besides, it seems to us that if the appellant's construction is accepted, it would necessarily mean that it would be at the option of the employer to allow the workman to avail himself of the remedy provided by sub-s. (2), because he has

> merely to raise an objection on the ground that the right claimed by the workman is not admitted to oust the jurisdiction of the Labour Court to entertain the workman's application. The claim under Section 33C(2) clearly postulates that the determination of the question about computing the benefit in terms of money may, in some cases, have to be preceded by an enquiry into the existence of the right and such an enquiry must be held to be incidental to the main determination which has been assigned to the Labour Court by sub-sec. (2). As Maxwell has observed "where an Act confers a jurisdiction, it impliedly also grants the powers of doing all such acts, or employing such means, as are essentially necessary to its execution*''. We must accordingly hold that S. 33C(2) takes within its purview cases of workmen who claimed that the benefit to which they are entitled should be computed in terms of money, even though the right to the benefit on which their claim is based is disputed by their employers. Incidentally, it may be relevant to add that it would be somewhat odd that under sub-s. (3), the Labour Court should have been authorised to delegate the work of computing the money value of the benefit to the Commissioner if the determination of the said question was the only task assigned to the Labour Court under sub-s. (2). On the other hand, sub-s. (3) becomes intelligible if it is held that what can be assigned to the Commissioner includes only a part of the assignment of the Labour Court under sub-s. (2).

9. Similar question was raised before this court in Special Civil Application NO. 6415 of 2006 which was decided by this court on 28.7.2006. In the said petition, Botad Nagar

Palika was challenging order of the labour court, Baroda in Recovery Application No.200 of 1989 dated 30.8.2005 wherein the Labour Court has granted the double amount of weekly off in favour of the concerned workmen with cost of Rs.500/- each to concerned workmen for a period of ten years. Said petition was dismissed by this court examining the question of limitation under section 33-C-2 of the ID Act, 1947 as well as the question of Minimum Wages Act have been considered by this court in the said petition under Article 227 of the Constitution of India.

10. In view of the aforesaid discussion, contentions raised by learned Advocate Mr. Dave cannot be accepted because there is no provision under section 33-C-2 of the ID Act, 1947 requiring filing of such application within any specified period. When there is no period specified in the section, then, the Court cannot apply its own wisdom by specifying period by rewriting the

legislation. When the legislation has not thought it fit to specify the time limit in filing recovery application and, therefore, labour court has not committed any error in entertaining such applications considering the plain language of section 33C (2) of the ID Act, 1947 and labour court was right in entertaining such applications. Workmen proved their pre-existing right based on the service rules produced by the petitioner and not disputed by the employer about giving two pair of dress for each year to male employee and female employee. Undisputedly such benefits were not given to the present respondents for the period from 1982-83 to 1992-93 and thus pre-existing right based on service rules was proved by the respondents before the labour court in the proceedings under section 33C (2) of the ID Act, 1947 and on that basis, labour court has rightly discussed evidence on record and also consider earlier decision of labour court on

the same issue which was not challenged by petitioner before the higher forum and ultimately benefit of two pair calculated in terms of money as reasonable amount of two pair of dresses of each year was quantified by the labour court on the basis of suggestion of the witness for respondent which was not controverted or disputed by petitioner before the labour court. Therefore, labour court has not committed any error in passing the orders in question and same would not require any interference of this court in exercise of the powers under Article 227 of the Constitution of India.

11. Decisions relied upon by learned Advocate Mr. Dave have been considered by this court. Those decisions are relating to exercise of powers. Here, question is not that of exercise of power by any authority. Question is that of right of the workmen flowing from the service rules which are not in dispute and based upon such service rules, right was

claimed by workmen. Therefore, in the peculiar facts and circumstances of this case, those decisions are not applicable to this case.

12. This Court, in exercise of the powers under Article 227 of the Constitution of India, cannot act as an appellate court and also cannot disturb the findings of fact unless it is successfully demonstrated that the same are perverse or contrary to the evidence on record or baseless. This aspect has been considered by the apex court in Laxmikant Revchand Bhojwani and another versus Pratapsing Mohansingh Pardeshi, reported in (1995) 6 SCC 576. Relevant observations made by the apex court in para 9 of the said judgment are therefore reproduced as under:

> “The High Court under Article 227 cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles

of law or justice, where grave injustice would be done unless the High Court interferes. “

13. In Ouseph Mathai and Others versus M. Abdul Khadir, reported in (2002) 1 SCC 319, the apex court observed as under in para 4 and 5 :

“It is not denied that the powers conferred upon the High Court under Articles 226 and 227 of the Constitution are extraordinary and discretionary powers as distinguished from ordinary statutory powers. No doubt Article 227 confers a right of superintendence over all courts and tribunals throughout the territories in relation to which it exercises the jurisdiction but no corresponding right is conferred upon a litigant to invoke the jurisdiction under the said Article as a matter of right. In fact power under this Article cast a duty upon the High Court to keep the inferior courts and tribunals within the limits of their authority and that they do not cross the limits, ensuring the performance of duties by such courts and tribunals in accordance with law conferring powers within the ambit of the enactments creating such courts and tribunals. Only wrong decisions may not be

a ground for the exercise of jurisdiction under this Article unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the subordinate courts and tribunals resulting in grave injustice to any party.

5. In Waryam Singh v. Amarnath (1954 SCR 565) this Court held that power of superintendence conferred by Article 227 is to be exercised more sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority and not for correcting mere errors. This position of law was reiterated in Nagendra Nath Bose v. Commr. of Hills Division (1958 SCR 1240). In Bhahutmal Raichand Oswal v. Laxmibai R. Tarta (AIR 1975 SC 1297) this Court held that the High Court could not, in the guise of exercising its jurisdiction under Article 227 convert itself into a Court of appeal when the Legislature has not conferred a right of appeal. After referring to the judgment of Lord Denning in R v. Northumber Compensation Appeal Tribunal, Exparte Shaw (1952 (1) All ER 122, 128) this Court in Chandavarkar Sita Ratna Rao v. Ashalata S. Gurnam held : (SCC p.460 para 20)

"20.It is true that in exercise of jurisdiction under Article 227 of the Constitution the High Court could go into the question of facts or look into the evidence if justice so requires it, if there is any misdirection in law or a view of fact taken in the teeth of preponderance of evidence. But the High Court should decline to exercise its jurisdiction under Articles 226 and 227 of the Constitution to look into the fact in the absence of clear and cut down reasons where the question depends upon the appreciation of evidence. The High Court also should not interfere with a finding within the jurisdiction of the inferior tribunal except where the findings are perverse and not based on any material evidence or it resulted in manifest injustice (see Trimbak Gangadhar Teland 1977 (2) SCC 437). Except to the limited extent indicated above, the High Court has no jurisdiction. In our opinion therefore, in the facts and circumstances of this case on the question that the High Court has sought to interfere, it is manifest that the High Court has gone into questions which depended upon appreciation of evidence and indeed the very fact that

the learned trial Judge came to one conclusion and the Appellate Bench came to another conclusion is indication of the position that two views were possible in this case. In preferring one view to another of factual appreciation of evidence, the High Court transgressed its limits of jurisdiction under Article 227 of the Constitution. On the first point, therefore, the High Court was in error."

14. In Roshan Deen versus Preeti Lal, reported in (2002) 1 SCC 100, the apex court observed as under in paragraph 12:

"12. We are greatly disturbed by the insensitivity reflected in the impugned judgment rendered by the learned Single Judge in a case where judicial mind would be tempted to utilize all possible legal measures to impart justice to a man mutilated so outrageously by his cruel destiny. The High Court non suited him in exercise of a supervisory and extraordinary jurisdiction envisaged under Article 227 of the Constitution. Time and again this Court has

reminded the power conferred on the High Court under Articles 226 and 227 of the Constitution is to advance justice and not to thwart it (vide State of UP v. District Judge, Unnao [(1984) 2 SCC 673: AIR 1984 SC 1401]). The very purpose of such constitutional powers being conferred on the High Court is that no man should be subjected to injustice by violating the law. The lookout of the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the by-produce of an erroneous view of law, the High Court is not expected to erase such justice in the name of correcting the error of law."

15. Learned Advocate Mr. Dave has not been able to point out any legal infirmity in the orders passed by the labour court. He has also not been able to point out that the

orders in question have been passed by the labour court without jurisdiction or that same are contrary to the evidence on record. The findings recorded by the labour court are not baseless and perverse or contrary to the evidence on record. Therefore, there is no substance in these petitions filed by the petitioners.

16.In result, these petitions are dismissed.

(H.K. Rathod,J.)

Vyas